

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JAMES H. HAMILTON,

Petitioner,

v.

RICH JENNINGS,

Respondent.

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No. 4:20-CV-238 JMB

**MEMORANDUM AND ORDER**

This matter is before the Court on review of James H. Hamilton’s *pro se* filing titled “Motion for Void Judgement.” ECF No. 1. The document has been construed as a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Petitioner seeks an order from the Court “directing the Missouri Department of Corrections, its agents and officers to release [petitioner] immediately, without delay, denial or harm” and he cites a Missouri state case number “ED87627.” ECF No. 1-1 at 1, 5.

The petition is defective because it has not been drafted on a Court-provided form. *See* E.D. Mo. Local Rule 2.06(A). In addition, plaintiff has neither paid the filing fee nor submitted a motion to proceed without prepaying fees or costs. *See* 28 U.S.C. § 1915(a). The Court will direct the Clerk of Court to send petitioner the Court’s forms “Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody” and “Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases.”

Based on a review of judicial records, the Court notes that petitioner James H. Hamilton (Missouri inmate number 355446) has filed two prior petitions for writ of habeas corpus under 28 U.S.C. § 2254, regarding Missouri state court case number ED87627, in this Court. *See*

*Hamilton v. Denney*, No. 4:10-CV-2083-CEJ (E.D. Mo. filed Nov. 1, 2010); *Hamilton v. Denney*, No. 4:13-CV-2437-CEJ (E.D. Mo. filed Dec. 2, 2013). The Court warns petitioner that under 28 U.S.C. § 2244(b)(1), this Court shall dismiss any claim presented in a second or successive 2254 habeas petition that was presented in a prior petition. Also, before petitioner may file a second or successive 2254 petition in this district court, 28 U.S.C. § 2244(b)(3)(A) requires that petitioner first get an order from the Eighth Circuit Court of Appeals authorizing this Court to consider the successive application.

Accordingly,

**IT IS HEREBY ORDERED** that the Clerk of Court is directed to mail to petitioner a copy of the Court's forms "Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody" and "Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases."

**IT IS FURTHER ORDERED** that petitioner shall file an amended petition on the Court-provided form within **thirty (30) days** of the date of this Order. Petitioner is advised that his amended petition will take the place of his original petition and will be the only pleading that this Court will review.

**IT IS FURTHER ORDERED** that petitioner shall either pay the \$5 filing fee or submit the "Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases" within **thirty (30) days** of the date of this Order.

**IT IS FURTHER ORDERED** that if petitioner fails to comply with this Order, the Court will dismiss this action without prejudice.

Dated this 19th day of February, 2020.

/s/ **John M. Bodenhausen**  
JOHN M. BODENHAUSEN  
UNITED STATES MAGISTRATE JUDGE